

21 p✓

MONTANA LEGISLATIVE HISTORY

Chapter 108 1989

Bill H _____ S 258

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 3/07 _____ c

3/07 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 2/01 _____ c

2/01 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SENATE FINAL STATUS

2/21	REFERRED TO TAXATION		
3/14	HEARING		
3/31	COMMITTEE REPORT--BILL CONCURRED		
4/04	2ND READING CONCURRED	93	4
4/05	3RD READING CONCURRED	95	2
RETURNED TO SENATE			
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
CHAPTER NUMBER 562 EFFECTIVE DATE: 10/01/89			

SB 258 INTRODUCED BY PINSONEAULT
REVISE LAWS REGARDING GRANTING OF PAROLE
BY REQUEST OF BOARD OF PARDONS

1/27	INTRODUCED		
1/27	REFERRED TO JUDICIARY		
2/01	HEARING		
2/02	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	47	0
2/07	3RD READING PASSED	50	0
TRANSMITTED TO HOUSE			
2/21	REFERRED TO JUDICIARY		
3/07	HEARING		
3/07	COMMITTEE REPORT--BILL CONCURRED		
3/08	2ND READING CONCURRED	78	19
3/09	3RD READING CONCURRED	72	20
RETURNED TO SENATE			
3/14	SIGNED BY PRESIDENT		
3/14	SIGNED BY SPEAKER		
3/15	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
CHAPTER NUMBER 188 EFFECTIVE DATE: 3/20/89			

SB 259 INTRODUCED BY WILLIAMS, B., ET AL.
PROVIDE EXEMPTIONS FROM SUNRISE LAW
BY REQUEST OF DEPARTMENT OF HEALTH &
ENVIRONMENTAL SCIENCES

1/27	INTRODUCED		
1/27	REFERRED TO STATE ADMINISTRATION		
1/28	REREFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/06	HEARING		
2/14	COMMITTEE REPORT--BILL PASSED		
2/16	2ND READING PASSED	48	0
2/18	3RD READING PASSED	49	0
TRANSMITTED TO HOUSE			
2/21	REFERRED TO STATE ADMINISTRATION		
3/07	HEARING		
3/07	COMMITTEE REPORT--BILL CONCURRED		
3/08	2ND READING CONCURRED	88	9
3/09	3RD READING CONCURRED	79	14
RETURNED TO SENATE			
3/14	SIGNED BY PRESIDENT		

SENATE BILL NO. 258
INTRODUCED BY PINSONEAULT
BY REQUEST OF THE BOARD OF PARDONS

IN THE SENATE

JANUARY 27, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 2, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 3, 1989	PRINTING REPORT.
FEBRUARY 4, 1989	SECOND READING, DO PASS.
FEBRUARY 6, 1989	ENGROSSING REPORT.
FEBRUARY 7, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 7, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 8, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 72; NOES, 20.
	RETURNED TO SENATE.

MARCH 10, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 258
 2 INTRODUCED BY Sen. [Signature]
 3 BY REQUEST OF THE BOARD OF PARDONS
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING
 6 PROVISIONS REGARDING GRANTING OF PAROLE; PROVIDING THAT
 7 DECISIONS OF THE BOARD OF PARDONS ARE NOT REVIEWABLE; MAKING
 8 PAROLE RELEASE DISCRETIONARY, RATHER THAN MANDATORY, IF
 9 CERTAIN STATUTORY CRITERIA ARE MET; CLARIFYING PROVISIONS
 10 REGARDING GRANTING OF PAROLE TO A PRISONER WHO COMMITS A NEW
 11 CRIME; AMENDING SECTIONS 46-23-107, 46-23-201, AND
 12 46-23-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND A RETROACTIVE APPLICABILITY DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 46-23-107, MCA, is amended to read:

17 "46-23-107. Orders of board -- reviewability.
 18 Decisions of the board ~~shall~~ must be by majority vote. The
 19 orders of the board are not reviewable ~~except--as--to~~
 20 ~~compliance--with--the--terms--of--parts--17--27--37--and--10--of--this~~
 21 ~~chapter."~~

22 **Section 2.** Section 46-23-201, MCA, is amended to read:

23 "46-23-201. Prisoners eligible for parole. (1) Subject
 24 to the following restrictions contained in subsections (2)
 25 through (4), the board ~~shall~~ may release on parole by

1 appropriate order any person confined in the Montana state
 2 prison or the women's correction center, except persons
 3 under sentence of death and persons serving sentences
 4 imposed under 46-18-202(2), when in its opinion there is
 5 reasonable probability that the prisoner can be released
 6 without detriment to the prisoner or to the community+.

7 ~~(a)~~(2) No A convict serving a time sentence may not be
 8 paroled until he has served at least one-half of his full
 9 term, less the good time allowance provided for in
 10 53-30-105; except that a convict designated as a
 11 nondangerous offender under 46-18-404 may be paroled after
 12 he has served one-quarter of his full term, less the good
 13 time allowance provided for in 53-30-105. Any offender
 14 serving a time sentence may be paroled after he has served,
 15 upon his term of sentence, 17 1/2 years.

16 ~~(b)~~(3) No A convict serving a life sentence may not be
 17 paroled until he has served 30 years, less the good time
 18 allowance provided for in 53-30-105.

19 ~~(2)~~(4) A parole ~~shall~~ may be ordered only for the best
 20 interests of society and not as an award of clemency or a
 21 reduction of sentence or pardon. A prisoner ~~shall~~ may be
 22 placed on parole only when the board believes that he is
 23 able and willing to fulfill the obligations of a law-abiding
 24 citizen.

25 ~~(3)~~(5) If the department of institutions certifies to

the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in subsection-~~(1)~~ subsections (2) and (3).

~~(4)~~(6) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection ~~(3)~~ (5) do not apply."

Section 3. Section 46-23-217, MCA, is amended to read:

"46-23-217. Service of term for additional crime. A prisoner who commits a crime while ~~at--large~~ imprisoned in the state prison or while released on parole or conditional under the supervised release program and who is convicted and sentenced ~~therefor~~ for the crime shall serve ~~such the~~ sentence consecutively with the remainder of the original sentence as provided in 46-18-401. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence as provided in 46-18-401."

NEW SECTION. Section 4. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to sentences imposed before [the effective date of this act].

-End-

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on February 1, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Crippen, Vice Chairman Bishop, Senator Beck, Senator Brown, Senator Halligan, Senator Harp, Senator Jenkins, Senator Mazurek, Senator Pinsoneault, Senator Yellowtail

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Staff Attorney, Rosemary Jacoby, Committee Secretary

Announcements/Discussion: There was none.

HEARING ON HOUSE BILL 146

Presentation and Opening Statement by Sponsor:

Representative Strizich of Great Falls, representing District 90, opened the hearing. He explained that HB 146 was brought by the Peace Officer's Standards and Training Advisory Council. The bill amends the statute to specify who can attend the Montana Law Enforcement Academy. The purpose of the bill is to allow people like criminal justice students the ability to attend the Law Enforcement Academy prior to being hired by law enforcement agencies, he said. Current law requires this training occur at the expense of the hiring agency. The bill would allow prospective employees to have completed the basic course before they are hired. He said the "post" council will establish the criteria for these people, then maintain a pool of basic, trained recruits that would be available for employment by the agencies.

Recommendation and Vote: Senator Harp MOVED that Senate
Bill 269 BE TABLED. The MOTION CARRIED UNANIMOUSLY
HEARING ON SENATE BILL 258

← SB 268

Presentation and Opening Statement by Sponsor: Senator
Pinsoneault of St. Ignatius, District 27, said he was
carrying the bill as a favor to Senator Hammond. The
purpose of the bill was to revise provisions of parole and
revise the board of pardons decisions, etc. He said the
use of "shall" and "may" had been challenged and ended up in
the Supreme Court. The board felt it had no alternative but
to place a person on parole if he had met all statutory
requirements and felt the law should be clarified in that
statute.

List of Testifying Proponents and What Group they Represent:

Nick Rotering, Department of Institutions and Montana
Board of Pardons

List of Testifying Opponents and What Group They Represent:

None

Testimony: Nick Rotering testified before the committee and
submitted written testimony (See Ex. 3).

Questions From Committee Members: Senator Pinsoneault
asked, if a man is on parole and commits another crime, he
is returned to prison. Would that time count for the
original offense, he asked. Mr. Rotering gave a example of
a non-dangerous convict sentenced to a 10-year sentence, had
done 1/4 of his time on good time, went on parole. While
out on parole, he might commit a new offense and be found
guilty, said Mr. Rotering, thus receiving an additional 10
years. Because he had been released before the expiration
of the first sentence, the board would give him a revocation
of the parole on the first 10 years, requiring him to serve
out the remaining 6 years. Any future parole would have to
be on the second sentence, he said.

Closing by Sponsor: Senator Pinsoneault thanked the
committee for a favorable consideration and closed the
hearing.

DISPOSITION OF SENATE BILL 258

Discussion: Senator Mazurek asked about the retroactive date. Senator Crippen felt that portion should be deleted.

Amendments and Votes: Senator Mazurek MOVED to strike Section VI in its entirety and to reflect it in the title on line 13. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Pinsoneault MOVED that Senate Bill 258 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 209

Discussion: Senator Brown said he had obtained some additional information on the entry level salaries for nearby states. While Montana's entry level salary for court reporters is \$16,000, Wyoming's is \$30,086, Idaho's is \$27,000, North Dakota is \$23,700, and South Dakota is \$19,406, he stated. He said the average of those is \$25,046 so he thought \$25,000 would be fair.

Senator Beck asked what the average salary is presently for a court reporter. Jerome Anderson, lobbyist for the Court Reporters Association, said \$23,000, and that none were at the \$16,000 level.

Senator Beck asked how much money a court reporter made other than the salary. Mr. Anderson said some additional money is made on transcripts on their own time. Some districts have a lot of transcripts, and some have none. If the volume of work is large, the reporter hires someone else to do the transcripts.

Senator Yellowtail felt the amendment should cut the salaries on both ends. Senator Jenkins felt the raises would impact the counties.

Amendments and Votes:

Senator Brown MOVED to AMEND the bill on page 1, line 14, striking \$25,000 and inserting \$23,000, striking \$35,000, and inserting \$32,000. The MOTION CARRIED on a vote of 6 to

The following is the legal impact regarding SB 258 by Senator Pinoneault at request of the Board of Pardons.

The legal impact regarding this bill is to generally revise the provisions regarding the granting of parole.

Section 1: Section 1 clearly will indicate that decisions of the Board of Pardons must be by a majority vote of the Board and that the orders of the Board are not reviewable as far as appeals through the administrative procedures act, or appeals to the district courts. This does not mean that due process or equal protection issues cannot be filed with the courts as writs of habeas corpus. This will essentially clarify a growing concern of frivolous suits by rejected inmates through the district courts. The case law will support this change.

Section 2: This section contains the major impact of this legislation. Aside from grammatical changes, the changing of the word "shall" to "may" throughout the act, will offset the liberty interest that the United States Supreme Court found in the existing legislation. The word "shall" was construed by the United States Supreme Court to create a constitutionally protected "liberty interest" which meant that an inmate, if eligible, had an entitlement to release on parole after meeting the statutorily specified minimum time of incarceration. The Court concluded that the present statute did create such an interest and that the liberty interest expectation could only be removed after a constitutionally sufficient notice and hearing by the Board. See the attached Attorney General's position.

Section 3: Section 3 helps clarify the continuing problem of construing sentences that are incurred by parolees. They must be served consecutive to the original sentence that the inmate was paroled upon. However, if he is returned as a parole violator with a new sentence, he still will remain eligible for parole consideration on the first sentence in order not to extinguish a liberty interest that was created in that scenario. It will help clarify a continuing problem that has resulted in a lot of litigation with no real clarity.

Section 4: Section 4 is the extension of the rule making authority of the bill.

Section 5: Section 5 makes the act effective upon passage and approval.

Section 6: Section 6 makes it retroactive within the meaning of Section 1-2-109 to sentences imposed before the effective date of the act. That particular portion of the bill may, in fact, cause some problems.

NAME: Nick A. Rotering DATE: 2-4-89

SB 258

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? DEPT. OF INSTITUTIONS

APPEARING ON WHICH PROPOSAL: SB 258

DO YOU: SUPPORT? ☒ AMEND? _____ OPPOSE? _____

COMMENTS: see ATTACH exhibit 3

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on March 7, 1989, at 8:05 a.m.

ROLL CALL

Members Present: All except:

Members Excused: Rep. Hannah

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE 322

Presentation and Opening Statement by Sponsor:

Sen. Fred Van Valkenburg, District 30, stated that SB 322 would respond to a Supreme Court decision from late 1986 which changed a journalist's privilege of nondisclosure of confidential sources. The Court ruled in Sible vs. Lee Enterprises that said if a news entity or reporter is sued and in the course of defending that lawsuit, takes the witness stand, then that person waives the privilege of nondisclosure of a confidential source. Our forefathers recognized the need for an active, involved and free press and put a provision in our constitution (the first amendment) which guarantees the right of a free press. It has served our country well even though there have been difficulties at times. The press must be able to protect the confidentiality of its sources and should not be subject to coercive attempts to force disclosure. This bill has broad support from the media and no opposition in the Senate. Rep. Ramirez (co-sponsor) has prepared an amendment.

Testifying Proponents and Who They Represent:

Mike Voeller, Lee Newspapers
Brad Hurd, Editor, Missoulian
Gary Moseman, Editor, Great Falls Tribune
Charles Walk, Executive Director, Montana Newspaper Association
Ian Marquand, News Director, KTVH; President, Society of
Professional Journalists

bill.

Wally Jewell expressed support for this bill and asked for more time until further work can be completed on the bill.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Eudaily asked Sen. Van Valkenburg asked kinds of rules were being used presently. Sen. Van Valkenburg stated that they are operating under a combination of statutes and case law that has developed over time. There are no rules of criminal procedure. There are rules of civil procedure and the federal government has both civil and criminal procedure rules. Not only would this bill modernize the statutes but would provide a method for the future for changes. The effective date is later when the legislature handles it than it would be if the Supreme Court had enacted the rule changes.

Closing by Sponsor: Sen. Van Valkenburg closed.

Chairman Brown stated that the bill will be placed in a subcommittee and he counseled them not to meet until the commission is in agreement on the additional changes. Rep. Strizich, chair, Rep. Nelson and Rep. Rice will compose the committee.

HEARING ON SENATE 258

Presentation and Opening Statement by Sponsor:

Sen. Pinsonneault, District 27, stated this bill is by request of the Board of Pardons. This bill does not relate to any part of the trial process. The trial has been completed, the prisoner has been sentenced and, under present law, having served a certain period of time, the prisoner becomes eligible for parole. SB 258 tries to give the Board of Pardons more discretion by changing "shall" to "may" in section 2. Section 1 provides that the decision by the Board of Pardons must be by majority vote and that is not appealable. What has been occurring is that a prisoner had met the statutory criteria, he could go through the administrative procedure act and then into the district court. Under this bill that would be eliminated. The prisoner would still have a right under equal protection issues that he could bring before a district court on a writ of habeas corpus. Section 3 helps clarify the problem of concurring sentences of a new crime.

Testifying Proponents and Who They Represent:

Nick Rotering, Board of Pardons' Attorney, Department of
Institutions' Chief Counsel

Proponent Testimony:

Nick Rotering stated that this bill is a recommendation of the Criminal Advisory Justice Committee that studied problems of prison overcrowding. It also coincides with the US Supreme Court decision that was handed down a year ago (Allen vs. Burgess). Essentially, SB 258 is a request for three items. Section 1 indicates that the decisions of the Board of Pardons will be made by a majority vote and that the decisions are final and not reviewable under the Administrative Procedures Act. Section 2 is the means of addressing the Supreme Court decision by deleting "shall" and inserting "may. It will give the Board of Pardons and the State further discretion on whether or not a parole will be granted. Section 3 clarifies the eligibility of the prisoner for parole for his first offense after he has been convicted and returned to prison on another offense (EXHIBIT 4). The Senate Judiciary Committee deleted a portion of the bill that made the bill retroactive and he agreed with that move.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Boharski asked Mr.

Rotering if he would clarify section 3. Mr. Rotering explained that the board can revoke the parole on a first offense after he has been returned to prison because of a second violation while on parole. The terms presently must be served consecutively. This bill would allow the person to be paroled to begin serving time on the second offense. He doesn't leave prison but serves time on the second sentence sooner.

Rep. Gould asked Mr. Rotering if this bill would affect the number of people that the parole officers are going to have in their caseload. Mr. Rotering said that if the board is given the discretion to parole in section 3, it is possible that a man could be paroled and would increase the caseload for officers. Mr. Rotering thought that there was an increase in field services budget for the department. He was not positive though.

14

Closing by Sponsor: Sen. Pinsoneault remarked that this bill is not trying to restrict when the prisoner becomes eligible for parole. The Board should be given the discretion necessary to avoid cluttering the process with frivolous appeals.

DISPOSITION OF SENATE BILL 258

Motion: Rep. Addy moved that SB 258 BE CONCURRED IN. Rep. Gould seconded.

Discussion: Rep. Boharski expressed concern with section 3. It is a substantial change. John MacMaster, Rep. Gould and Rep. Brown explained the section to him.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that SB 258 BE CONCURRED IN CARRIED with Reps. Boharski and Wyatt seconded.

HEARING ON SENATE BILL 312

Presentation and Opening Statement by Sponsor:

Sen. Dick Pinsoneault, District 27, stated that primary sponsors of SB 312 have requested that the bill be tabled.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Sen. Pinsoneault closed.

DISPOSITION OF SENATE BILL 312

Motion: Rep. Addy moved the SB 312 be TABLED. Rep. Gould seconded.

Discussion: None.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 7, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

March 7, 1989

Page 1 of 1

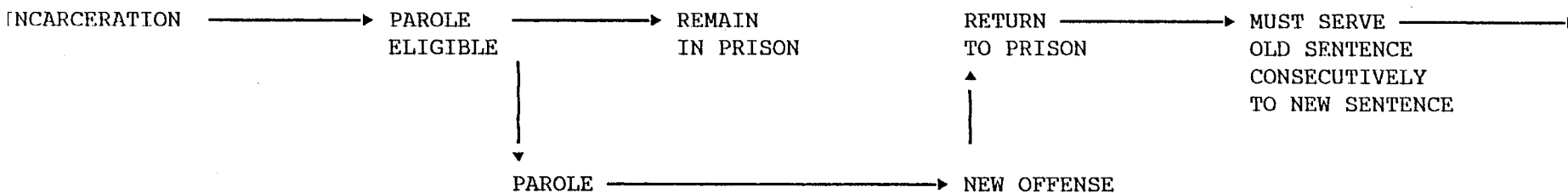
Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 258 (third reading copy -- blue) be concurred in.

Signed: 
Dave Brown, Chairman

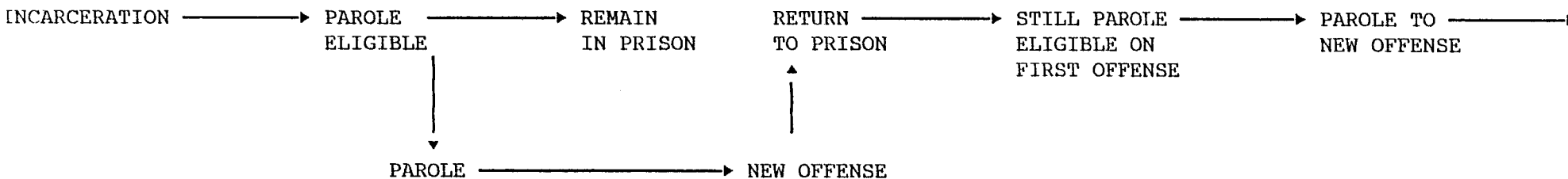
[REP. GOULD WILL CARRY THIS BILL ON THE HOUSE FLOOR]

4
3/7/89
SB 258
PRESENT LAW

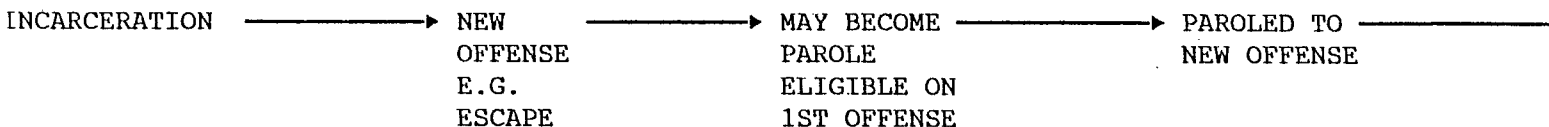
SENATE BILL 258



NEW PROPOSAL
SECTION 3 OF SB 258



OR



VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 258DATE March 7, 1989SPONSOR SEN. PINSONEAULT

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Nick Roterling	Dept. of Institutions	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE BILL NO. 258

INTRODUCED BY PINSONEAULT

BY REQUEST OF THE BOARD OF PARDONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS REGARDING GRANTING OF PAROLE; PROVIDING THAT DECISIONS OF THE BOARD OF PARDONS ARE NOT REVIEWABLE; MAKING PAROLE RELEASE DISCRETIONARY, RATHER THAN MANDATORY, IF CERTAIN STATUTORY CRITERIA ARE MET; CLARIFYING PROVISIONS REGARDING GRANTING OF PAROLE TO A PRISONER WHO COMMITS A NEW CRIME; AMENDING SECTIONS 46-23-107, 46-23-201, AND 46-23-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND-A-RETROACTIVE-APPLICABILITY-DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-23-107, MCA, is amended to read:

"46-23-107. Orders of board -- reviewability. Decisions of the board shall must be by majority vote. The orders of the board are not reviewable except--as--to compliance--with--the--terms--of--parts--17--27--37--and--40--of--this chapter."

Section 2. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions contained in subsections (2) through (4), the board shall may release on parole by

appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

{a}{2} No A convict serving a time sentence may not be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

{b}{3} No A convict serving a life sentence may not be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

{2}{4} A parole shall may be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

{3}{5} If the department of institutions certifies to

the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in ~~subsection (1)~~ subsections (2) and (3).

~~(4)~~(6) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection ~~(3)~~ (5) do not apply."

Section 3. Section 46-23-217, MCA, is amended to read:

"46-23-217. Service of term for additional crime. A prisoner who commits a crime while at--large imprisoned in the state prison or while released on parole or conditional under the supervised release program and who is convicted and sentenced therefor for the crime shall serve such the sentence consecutively with the remainder of the original sentence as provided in 46-18-401. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence as provided in 46-18-401."

NEW SECTION. Section 4. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

~~NEW SECTION. Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to sentences imposed before the effective date of this act.~~

-End-